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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,407	02/18/2004	Satoshi Mizutani	200500200894-US0	4329
7278	7590	08/05/2009		
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER STEPHENS, JACQUELINE F	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 08/05/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/782,407

Applicant(s)

MIZUTANI ET AL.

Examiner

Jacqueline F. Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-12 and 14-21 is/are pending in the application.
- 4a) Of the above claim(s) 6-11 and 14-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB06)
Paper No(s)/Mail Date 4/29/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 4/13/09 have been fully considered, but are not persuasive. Applicant argues Kameo fails to teach an absorbent article having a substantially elliptical cross-section. However, as previously argued, a change in shape is generally recognized as being within the level of ordinary skill in the art. Applicant has not disclosed that an elliptical cross-section provides any significant advantage as compared to an absorbent member having another shape. As to the limitation of the third fiber aggregate 'tends' to protrude readily from the labia, the limitation allows for the third fiber aggregate to not protrude from the labia as it may have a tendency to protrude, but this is not specifically required. Thus, the structure of Kameo still meets the claim limitation. As to the length of the elliptical cross section having a length, any portion of the cross section constitutes 'a' length. The claim does not require the entire length of the aggregates to be arranged as claimed.

does not provide a three-aggregate structure. The three-aggregate structure of Kameo is discussed in the rejection below. Applicant argues Kame teaches tightly coupled layers for producing an absorbent article, and thus is not configured to be particularly flexible. However, Kameo teaches a flexible article where the layers are united in a way to prevent distortion, yet provide flexibility (page 2, lines 35-41). As to the argument that Kameo fails to teach the first fiber aggregate, the second fiber aggregate, and the third fiber aggregate are free of any adhesive agent or pressing applied, Kameo teaches various methods of uniting the aggregates including embossing and thermal bonding,

thermal bonding at least does not require an adhesive or pressing. Applicant argues Kameo fails to speak as to the fiber lengths used in the absorbent member 6 and this is addressed in the rejection below.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-4, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kameo et al. EP 0 858 791.

As to claims 1, 3, and 12, Kameo teaches a pad capable of being positioned in the interlabial space comprising:

an absorbent body 4 for absorbing liquid, and

a cover body 2,3, for covering the absorbent body in an enclosing manner

(Figure 2. Kameo does not specifically teach a substantially elliptical cross-section.

However, it would have been an obvious matter of design choice to provide the article of Kameo with an elliptical cross-section shape, since such a modification would have involved a mere change in the shape of the component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In Re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Kameo teaches the absorbent body including a fiber aggregate in which the fibers are oriented in random directions (page 4, lines 18-19), the fiber aggregate including:

a first fiber aggregate 7 located on an upper side of the interlabial pad in a vertical direction when the interlabial pad is worn by a wearer (Figure 4), the first fiber aggregate having a first flexural rigidity which is controlled according to a first average fiber length for being deformable upon contacting a vestibular floor of the wearer (page 5, lines 16-20 and lines 40-44),

a third fiber aggregate 7 located on a lower side of the second fiber aggregate and on a lower side of the interlabial pad (Figure 4), the third fiber aggregate having a third flexural rigidity which is controlled according to a third averaged fiber length for

being deformable upon receiving an external impact (page 5, lines 16-20 and lines 40-44),

wherein the first fiber aggregate, the second fiber aggregate, and the third fiber aggregate are free of any adhesive agent or pressing applied to any of the first second, and third fiber aggregate as Kameo teaches embossing and thermal bonding as well as adhesive application and groove-making pressing (page 3, lines 49-51); and are covered by the cover body 2,3, such that ends of the cover body are affixed on the third fiber aggregate (Figure 2);

wherein each of the first average fiber length and the third average fiber length is between 25mm and 50mm (page 5, lines 40-43). Kameo does not specifically teach the fiber length of the second fiber aggregate. However, Kameo teaches the absorbent 6 comprises pulp fibers, which typically are staple or short fibers. Additionally, Kameo teaches the benefit of having shorter fibers for providing a small degree of orientation (page 5, lines 16-20 and lines 42-44). It would have been obvious to one having ordinary skill in the art to provide the claimed fiber lengths of the first, second, and third aggregates as Kameo teaches the general conditions of fiber orientation and fiber length to prevent distortion. Since, the general conditions of the claims are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. See *In re Aller*, 105 USPQ 233.

Kameo does not specifically teach providing spaces in the first fiber aggregate and the third fiber aggregate which are more varied than spaces between fibers in the second fiber aggregate. However, Kameo further teaches randomly oriented fibers so

that the absorbent is deformable in conformity with the wearer (page 5, lines 14-16). On pages 7-9, the specification sets forth suitable materials making the absorbent article having the claimed characteristics, namely an average fiber length of 10-51mm (page 7, line 12); random fiber orientation (page 9, lines 16-21); and controlling tensile elongation (page 7, lines 6-7). Kameo teaches similar materials for the absorbent (pages 3-5). Kameo teaches the absorbent has an elastic member 7 positioned at a vestibular floor side, which due to its thermoplastic composition and elasticity has a higher tensile elongation than the component 6.

The absorbent body flexural rigidity and ratio of flexural rigidities between the longitudinal or lateral direction and the thickness direction of the absorbent body is taught in the structure taught by Kameo. Kameo discloses an absorbent comprising an absorbent member having a specific structure and elastic member having specific physical properties. Kameo teaches the layers of the absorbent component are positioned to prevent distortion (page 4, lines 20-25). As to the limitation of the third fiber aggregate 'tends' to protrude readily from the labia, the limitation allows for the third fiber aggregate to not protrude from the labia as it may have a tendency to protrude, but this is not specifically required. Thus, the structure of Kameo still meets the claim limitation. As to the length of the elliptical cross section having a length, any portion of the cross section constitutes 'a' length. The claim does not require the entire length of the aggregates to be arranged as claimed.

As to claim 2, the ratio of flexural rigidities as claimed is between 0.5 and 2.0. Therefore, the flexural rigidities between the first and the third at least can be the same with a ratio of 1.

As to claim 4, Kameo teaches layer 7, which is positioned at the vestibular floor is a mix of synthetic fiber and/or natural fibers (page 5, lines 52-58). The tensile elongation would have been obvious to one of ordinary skill in the art by optimizing the type, fineness, and orientation of the fibers. Moreover, discovering optimum values only involves routine skill in the art, *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacqueline F Stephens/
Primary Examiner, Art Unit 3761